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Howard Kaiser

In re Patent Application of:	:	Confirm. No.:	8767
GLENN G. WARD, DONALD J. COLLINS and	:		
RICHARD A. STUTCHFIELD	:		
	:		
Serial No.:	09/671,871	:	Art Unit:
Filing Date:	09/28/00	:	
Attorney Docket No.:	82,144	:	
	:		
Title:	OPERATING PLAN FOR MACHINERY	:	Examiner:
		:	Vanel Frenel

Faxed herewith please find the following papers, being formally filed by Applicant:

Appeal Brief.....38 pages

Fee Authorization.....1 page

MAR 21 2005

PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: : Confirm. No.: 8767
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Filing Date: 09/28/00 :
Attorney Docket No.: 82,144 :
Title: OPERATING PLAN FOR MACHINERY : Examiner: Vanel Frenel

APPEAL BRIEF

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

In accordance with 37 CFR 41.37, and in connection with the above-identified application, Applicant-Appellant respectfully submits this Appeal Brief.

(1) REAL PARTY IN INTEREST

The real party of interest in the above-identified application is the United States of America as represented by the Secretary of the Navy, assignee of the entire interest in the subject invention of the above-named inventors.

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Howard Kaiser

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Serial No. 09/671,871

Appeal Brief

Page 1 of 38

PATENTS

(2) RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals or interferences related to this appeal.

(3) STATUS OF CLAIMS

The instant application was filed on 28 September 2000 with thirty-three claims (claims 1-33).

The Office action dated 17 February 2004 rejected claims 1-33.

Applicant's Amendment filed 10 June 2004 amended claims 1, 10, 11, 16-29 and 33.

The Office action dated 22 September 2004, deemed final, rejected claims 1-33 as amended by Applicant's Amendment filed 10 June 2004.

Applicant's Notice of Appeal (From the Examiner to the Board of Patent Appeals and Interferences) was filed on 21 December 2004.

On 04 March 2004 Examiner Vanel Frenel, Examiner Joseph Thomas and Attorney Howard Kaiser participated in a telephonic interview. The participants discussed the claims under appeal as well as claims informally proposed (previously faxed) by Applicant. No agreement was reached in the telephonic interview.

Accordingly, the claims that are the subject of the instant appeal are the thirty-three claims (claims 1-33) that were finally rejected pursuant to the final Office Action dated 22 September 2004.

A "clean" copy of said finally rejected claims 1-33 in their precise wording on appeal is contained herein in the "Claims Appendix" section (Section 8).

PATENTS

(4) STATUS OF AMENDMENTS

Subsequent to the final Office Action dated 22 September 2004, Applicant has filed formal papers under 37 CFR 1.116, as follows. On 20 March 2005, Applicant filed an "After-Final Amendment," a "Request to Vacate Final Rejection," and a "Petition for Extension of Time under 37 CFR 1.136(a)." As of 21 March 2005, the Office's response to these papers filed 20 March 2005 is pending.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Applicant's invention is entitled "Operating Plan for Machinery." Applicant's independent claim 1 is directed to a method of organizing and effecting a dynamic workflow management system, using a computer network that permits computer access to a server. Applicant's independent claim 19 is directed to a method for defining and executing the flow of management operations, making use of a central computer and plural workstation computers connected to the central computer. Applicant's independent claim 29 is directed to a computer-networked system for performing workflow management, the system comprising clients and a server.

Applicant discloses and claims a business plan or model that is dynamic and largely non-computational. Applicant's claimed invention describes the way that business is conducted. According to typical embodiments of the inventive methodology, a dynamic, interactive/communicative, integrated process is both referential and revisable. The personnel of various units of an organization can follow and adjust the process on a continual basis in furtherance of accomplishing various tasks. Applicant's invention can be embodied, for instance, as a flexible engineering method and system for describing the life cycle of machinery.

PATENTS

Claims 1, 19 and 29

Typical inventive embodiments are represented by Applicant's independent claims 1, 19 and 29. Applicant essentially claims in independent claims 1, 19 and 29 a method or system comprising features described in the following three paragraphs. Although independent claims 1, 19 and 29 are considered comparable in this section for summarization purposes, these claims are treated separately in the argument section hereinbelow.

Organizational units are established. Each organizational unit is based on a core function having a workflow characterization associated therewith. Each workflow characterization manifests connection/linkage with at least one other workflow characterization. See Applicant's specification, e.g., page 17, lines 9-14; page 15, lines 13-21; page 6, lines 17-19 (*"These Core Process teams were to define their core area, develop their process flows and identify 'links' to other Core areas"*); page 8, lines 6-7 (*"A key feature of this model is that no one process stands alone, each area is dependent on other areas."*); page 8, lines 13-14 (*"Although all eleven areas are linked, each of the eleven process descriptions has a distinct flavor and individual key elements."*); page 9, lines 14-16 (*"If one of the TCPs is not 'linked' to the others or funded properly, then the Life Cycle is weakened. As each of the TCPs and ICPs develop their process flow charts they will identify the 'links.' It is an essential function of the LCM to manage these links and make sure they happen."*); page 11, lines 5-6 (*"The inventive OPM better illustrates links between individual process to one another; without these links, the Life Cycle Model is weakened."*).

The organizational units are computer-networked with a server (central computer). The respective workflow characterizations are compiled, and the resultant compilation/manual (comprehensively describing the overall organizational workflow) is stored in the server. See Applicant's specification, e.g., page 17, line 18, to page 18, line 3 (*"Each*

PATENTS

core function unit has been provided, and has at its disposal, a hard copy of manual 99. Other forms or renderings of manual 99 (e.g., a CD-ROM version, or a computer intranet database) can also be made available to every external core function unit. Communications system 69, which links every external core functional unit to each other, includes telephone means 61, facsimile transmission means 62, computer means 63 and paper correspondence means 64. Computer means 63 preferably includes electronic mail means and can also include computer intranet means."; page 18, line 16 to page 19, line 2 (*As is the case with the external core function units, each internal core function unit has been provided, and has at its disposal, a hard copy of manual 99. Other forms or renderings of manual 99 (e.g., a CD-ROM version, or a computer intranet database) can also be made available to every external core function unit. Communications system 69, which links every external core functional unit to each other, includes telephone means 61, facsimile transmission means 62, computer means 63 and paper correspondence means 64. Computer means 63 preferably includes electronic mail ('e-mail') means and can also include computer intranet means.";* page 19, line 19 to page 20, line 18 (*"The same manual 99 is used by every core function unit and keeps the core function units 'on the same page.'"*). See also Applicant's FIG. 2, FIG. 3 and FIG. 4.

The compilation/manual is made available, on an ongoing basis, not only for viewing by the organizational units, but also for change-rendering by the organizational units. The change-rendering involves change in connectivity/linkage between at least two workflow characterizations. See Applicant's specification, e.g., page 19, line 19 to page 20, line 18 (*"The same manual 99 is used by every core function unit and keeps the core function units 'on the same page.' Manual 99 is not an 'etched-in-granite' document. Rather, manual 99 is an ever-changing document representative of a dynamic, ongoing process. Preferably, periodically updated editions of manual 99 will be part and parcel of the inventive business plan. Preferred inventive practice prescribes the institution of a timetable (e.g., every six months) for periodic submissions by core functional units of their corresponding updated sections of manual 99. Ideally, the 'management*

PATENTS

workflow channels' would continually be enhanced, e.g., added to, subtracted from or otherwise changed. Fundamental to the inventive life cycle management system is the continuous pursuit of improvement -- in particular, the constant endeavor to find and secure 'connections' between one's own core functional unit and one or more other core functional units. The cohesiveness of the inventive business plan is founded especially on two linchpins, namely, communications and connections. 'Communicate' and 'connect' are two of the inventive watchwords. As depicted in FIG. 2 through FIG. 4, communications system 69 in various ways advances communication among the core function units, thereby facilitating operation of the inventive business plan, and also thereby advancing the cohesiveness thereof as its participants continually strive for new or better ways to connect across core function unit demarcations. The changes in terms of 'connectiveness' are continually manifested in manual 99, in the procedures therein and especially in the flow diagrams therein."): page 21, line 18 to page 22, line 1 ("If one of the core function units is not 'linked' to the others or funded properly, then the inventive life and business cycle is weakened. As each of the external core function units (TCPs) and internal core function units (ICPs) develop their process flow charts, they will identify the 'links.' It is an essential overall function of the inventive life and business cycle management to manage these links and make sure they happen."). See also, Applicant's Figures 2 through 4.

Claims 2-9, 12-15, 21-23, 30-32

According to some inventive embodiments, the core functions are identified so as to divide the core functions into external core functions and internal core functions. See, e.g., Applicant's specification, page 14, lines 11-21; page 15, lines 13-18. The external core functions include (or are selected from the group consisting of) life cycle management, acquisition, research and development, test and evaluation, in-service engineering, integrated logistic support, program management and platform management. The internal core functions include (or are selected from the group consisting of) facilities, budget and contracts.

PATENTS

Claims 10 and 11

According to some inventive embodiments, each workflow characterization includes a narrative description, a procedural description and a flow diagrammatic description. See Applicant's specification, e.g., page 15, lines 20-21.

Claims 16, 24 and 33

According to some inventive embodiments, at least one type of communications among the organizational units is instituted, selected from the group consisting of telephone, telefax, paper correspondence and electronic mail. See Applicant's specification, e.g., page 17, line 21 to page 18, line 5.

Claims 17 and 20

According to some inventive embodiments, hard copies of the compilation/manual are distributed among the organizational units. See Applicant's specification, e.g., page 17, lines 18-19.

Claim 18

According to some inventive embodiments, the establishment of organizational units includes the establishment of a plurality of teams, each team having the responsibility of submitting a corresponding workflow characterization. See Applicant's specification, e.g., page 7, lines 2-12.

Claims 25 and 26

According to some inventive embodiments, the compilation/manual is kept current, at least to some extent by maintaining a scheduling policy for continually improving the organizational workflow, according to which the periodic updating of the compilation/manual is prescribed. For instance, the periodic updating of the compilation/manual can include electronic modification thereof. See Applicant's specification, e.g., page 19, line 19

PATENTS

to page 20, line 6.

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

I. Whether claims 1-33 should be rejected under 35 U.S.C. 103(a) as being unpatentable over Saito et al. U.S. Patent No. 6,578,006 in view of Summers U.S. Patent No. 6,408,263.

(7) ARGUMENT

I. Claims 1-33 should not be rejected under 35 U.S.C. 103(a) as being unpatentable over Saito et al. U.S. Patent No. 6,578,006 in view of Summers U.S. Patent No. 6,408,263.

35 U.S.C. 103 (originally enacted in 1952) and the 1966 U.S. Supreme Court decision *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966) are the main underpinnings of obvious-versus-nonobviousness analysis. As the U.S. Supreme Court in *Graham v. John Deere*, *supra*, 148 USPQ at 467 stated:

While the ultimate question of patent validity is one of law... [citation omitted], the sec. 103 condition ... lends itself to several basic factual inquiries. Under sec. 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

Instructive is MPEP 706.02(j), entitled "Contents of a 35 U.S.C. 103 Rejection," wherein the following is stated, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991): "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some

PATENTS

suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest **all the claim limitations**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure." [bold emphasis added herein]

"To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985), cited by MPEP 706.02(j).

These principles are well settled regarding obviousness rejections under 35 U.S.C. 103.

Applicant respectfully contends that, by the second Office action (dated 22 September 2004 and deemed "final"), the Office fails to make out a prima facie case of obviousness of the claimed invention as recited in independent claims 1, 19 and 29. Applicant respectfully urges either of the follow bases for this contention: (i) The Office fails to consider prima facie obviousness of the claimed invention as a whole; (ii) The Office improperly combines the applied references. It is respectfully argued that, on either basis or on both bases, the Office has failed to establish prima facie obviousness of Applicant's claimed invention. Applicant also respectfully urges these and additional reasons as to why certain dependent claims are allowable.

PATENTS

(i) Obviousness of the claimed invention as a whole

"In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." MPEP 2141.02, citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

Claims 1, 19 and 29

With due respect, the Office's approach (in its second Office action) to explaining its obviousness rejection suggests a failure on the Office's part to consider the claimed invention as a whole. That is, the Office's rationale betrays a non-contextualized concentration on certain features that the Office believes are shared by Saito et al. and the claimed invention, or by Summers and the claimed invention. The Office concentrates on "trees" (certain limitations), but fails to see the "forest" (overall context) of the "trees."

The instant application was filed on 28 September 2000 with thirty-three claims (claims 1-33). By the first Office action, dated 17 February 2004, the following rejections were rendered: (1) Claims 1-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter; and, (2) Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns et al. U.S. Patent 5,189,606 in view of Kennedy U.S. Patent 5,845,258. Applicant's Amendment filed 10 June 2004 amended claims 1, 10, 11, 16-29 and 33. The second Office action, dated 22 September 2004 and deemed final, withdraws the aforesaid rejections under 35 U.S.C. 101 and 35 U.S.C. 103(a) and rejects claims 1-33 as amended by Applicant's Amendment filed 10 June 2004. By the second Office action, the following rejection is rendered of claims 1-33 as amended by Applicant's Amendment filed 10 June 2004: Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito et al.

PATENTS

U.S. Patent No. 6,578,006 in view of Summers U.S. Patent No. 6,408,263.

Accordingly, the second Office action withdraws all previous rejections and renders a new ground of rejection under 35 U.S.C. 103(a). In fact, the second Office action characterizes its action thusly in its paragraph 4 (pp 13-14). This new ground rejection applied entirely new references, viz., Saito et al. and Summers, which were cited for the first time via the Office's "Notice of References Cited" that was attached to the second Office action. As to independent claims 1, 19 and 29, the second Office action discusses its rejection under 35 U.S.C. 103(a) as being unpatentable over Saito et al. in view of Summers in the following locations:

independent claim 1: second Office action, paragraph 3, subparagraph "(A)" (pp 2-3)

independent claim 19: second Office action, paragraph 3, subparagraph "(S)" (pp 7-9)

independent claim 29: second Office action, paragraph 3, subparagraph "(BB)" (pp 11-12)

With regard to each of independent claims 1, 19 and 29, the second Office action focuses upon the limitations that were added by Applicant's 06/10/04 Amendment, i.e., the previously unrecited limitations only. The Office also utilizes this approach as to some dependent claims, speaking in terms of "As per the added feature to claim 10," etc. Each of the above-listed subparagraphs began, "As per the added features to claim [1 or 19 or 29],..." In so doing, the Office seeks to consider whether certain differences themselves would have been obvious, but fails to consider whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, *supra*. Applicant respectfully urges that claims 1, 19 and 29, when each is considered as a coherent whole, are not obvious based on the applied art.

PATENTS

Claim 1

The Office does not properly view the claimed invention of claim 1 in wholistic fashion. Claim 1 is structured as a method of organizing and effecting a dynamic workflow management system using a computer network. The method comprises identifying core functions, producing information pertaining to the core functions, establishing core function units, uploading a coherent presentation and updating the coherent presentation. (This is a "bare-bones" or "structural" presentation of claim 1; some claim limitations are not mentioned in this paragraph).

Claim 19

The Office does not properly view the claimed invention of claim 19 in wholistic fashion. Claim 19 is structured as a method for defining and executing the flow of management operations. The method makes use of a central computer and plural workstation computers. The method comprises establishing plural organization units, formulating a manual, storing the manual in the central computer for access by the organizational units, and maintaining currency of the manual. (This is a "bare-bones" or "structural" presentation of claim 19; some claim limitations are not mentioned in this paragraph).

Claim 29

The Office does not properly view the claimed invention of claim 29 in wholistic fashion. Claim 29 is structured as a computer-networked system for performing workflow management. The system comprises a plurality of clients and a server. The information uploaded by any client to the server's centralized database includes identification of a plurality of core functions, a plurality of individual workflow descriptions, a plurality of core functional

PATENTS

units, a compilation of the individual workflow descriptions, and input revising the compilation. (This is a "bare-bones" or "structural" presentation of claim 29; some claim limitations are not mentioned in this paragraph)

"All words in a claim must be considered in judging the patentability of that claim against the prior art." In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); MPEP 2143.03. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP 2143.03, citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). An invention should not be distilled down to a "gist" or "thrust," for this approach disregards the requirement of analyzing the subject matter "as a whole." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. Denied, 469 U.S. 851 (1984); MPEP 2141.02.

Rather than look at the claimed invention as a whole, the Office incorrectly seizes upon what it believes to be the gist/thrust of the claimed invention. The Office incorrectly interprets the gist/thrust of the claimed invention to entail a computerized methodology for predicting a process for completing a single business task or project. This improper approach is apparently taken by the Office to support its position regarding the significance of the applied art, Saito et al.'s teachings in particular. This kind of gist/thrust approach to 35 U.S.C. 103 is not advisable to take in general for any technology or discipline, but it may be especially fraught with danger in the business methods area, which is replete with "business jargon" and "management speak." Such parlance frequently has ambiguous, nonuniform or inexact meaning.

Thus, the Office mistakenly takes, for instance, a "server 120" and a "workflow management unit 130" and a "task management unit 140" and an "event management unit 150" and a "task notification unit 160" (Saito et al., column 4, lines 2-14; Saito et al., FIG. 1), inaccurately equates

PATENTS

these "units" to Applicant's "core functional units," and then fallaciously concludes that Saito is disclosing Applicant's claimed invention.

The Office erroneously reads the combination of Saito et al. and Summers to disclose Applicant's claimed linkage/connection/nexus between/among workflow descriptions.

As recited in claim 1, each individual workflow description describes a said core function and establishes at least one linkage of the individual workflow description with at least one other individual workflow description; the coherent presentation is updated at least once, each updated coherent presentation being computer-accessible by said core function units, each updating including uploading at least a portion of an individual workflow description describing a core function so as to render at least one change to the preceding individual workflow description describing the same core function, the at least one change including modification with respect to the at least one linkage of the individual workflow description with at least one other individual workflow description.

As recited in claim 19, a manual at least substantially incorporates informational segments so as to prescribe the flow of management operations both intrarelationally within each organizational unit and interrelationally between the organizational units, the functional flow associated with each refined core function being characterized by at least one nexus between functional flow and the functional flow associated with at least one other refined core function; a manual is stored in the central computer for computer access by the organizational units; currency of the manual is maintained including electronically modifying of the manual, by at least one organizational unit, with respect to at least one nexus between the respective functional flows associated with at least two refined core functions.

As recited in claim 29, individual workflow descriptions each describe a function and establish at least one linkage of the individual workflow

PATENTS

description with at least one other individual workflow description; revisionary input (revising the compilation) includes at least a portion of an individual workflow description so as to render at least one revision to the preceding individual workflow description describing the same core function; each revisionary input revises the compilation with respect to the at least one linkage of an individual workflow description with at least one other individual workflow description.

The Office looks to the Summers reference to find what the Office believes to be disclosed by Summers, namely, the notion of a change being rendered with respect to a nexus/linkage between the workflow description (or functional flow) of a core functional unit and that of another core functional unit. The Office cites portions of Summers that do not appear to support what the Office purports. Summers talks about "core competencies," but there is no suggestion by Summers to -- as disclosed and essentially claimed by Applicant in claims 1, 19 and 29 -- change at least one linkage/nexus between workflow descriptions of two or more core functional units as presented in a coherent presentation.

Neither Summers nor Saito et al. talk to interrelated workflows of respective core units of an entire organization, as disclosed and essentially claimed by Applicant. Change is rendered according to Applicant's claimed invention to the coherent presentation for viewing by all of the core functional units. The change is rendered so as to change at least one nexus/linkage as it would be manifested in the coherent presentation, as noted above. Neither Saito et al. nor Summers teach or suggest the change that is claimed by Applicant. This claimed change is glossed over by the Office in its rationale. The Office thus, in a sense, offers a truism to the effect that change is good to support its 35 USC 103 rejection; see, e.g., the second Office action at pages 3, 8 and 11, wherein the Office states (in relation to Applicant's claimed "change"), "However, this feature is known in the art, as evidenced by Summers." Whether or not change is good in the abstract is not relevant to the obviousness determination. The Office fails

PATENTS

to inquire as to precisely the kind of change that is recited by Applicant in the context of the whole claimed invention.

The Office's questionable thinking with regard to the notion of "change" is indicated by the statement, made by the second Office action at three locations (i.e., separately with respect to claims 1, 19 and 29), that "It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Summers within the system of Saito with the motivation of increasing communication by investigating discussion of strategy and operation and by illuminating business concerns (See Summers, Col. 2, lines 19-21)." Summers does indeed disclose at column 2, lines 1-21, "A manager will gain the following benefits by using MTSs to improve his management skill:... MTSs increase communication by instigating discussion of strategy and operations and by illuminating business concerns." This "benefit" (Summers, column 2, line 1) by Summers is inapposite with respect to Applicant's claimed change respecting a nexus/linkage between workflow descriptions of plural core functional units as set forth in a compilation such as a manual. The type of "change" that Summers discloses is change in the training simulation to afford the management trainee an opportunity to be tested and instructed on various scenarios that he/she may face in the real world. This is unrelated to the type of "change" disclosed and claimed by Applicant, which is in terms of nexuses/linkages between workflow descriptions pertaining to different core functional units.

The Saito et al. invention is entitled "Project Work Management Method and System." Saito et al. disclose a computer-based workflow program that proceeds through steps. Saito et al.'s methodology represents a linear, task-oriented solution according to which an individual task is focused upon and subjected to processing. See, for instance, Saito et al. at column 3, line 48 to column 4, line 56. Saito et al. disclose computer processing with respect to the sequential performance of tasks. According to Saito, for each step, a computer makes a decision on the next step. Saito et al. teach a predictive tool, according to which work is put into a

Serial No. 09/671,871

Appeal Brief

Page 16 of 38

PATENTS

computer system and the computer system determines what the workflow is. See, e.g., Saito et al., column 5, lines 11-41 (... That is, when all tasks defined in the process definition 171 that must be executed in the current business phase are completed, the workflow management unit 130 sets the next business phase in the work management table 173 and activates the phase status column 340...). Again, Saito takes one task at a time and processes with respect to that task.

The Summers invention is entitled "Management Training Simulation Method and System." Summers discloses a modeling/simulation tool that is used for training managers. Summers' claim 1 (column 47) is indicative of his teachings: "A method implemented on a computer for representing changes in design opportunities in a management training simulation, comprising the steps of: a) providing an attribute-characteristic representation of one or more objects; b) processing said objects with a multi peaked value function; and c) changing at least one of a domain of one or more attributes and the number of attributes of the attribute-characteristic representation by removing restrictions on the valid object designs in the attribute-characteristic representation during the course of the management training simulation whereby a set of valid designs for said objects in the management training simulation is altered." Summers teaches a simulation tool whereby a management trainee is presented with changing scenarios; in particular, characteristics are changed to test the trainee's responses.

It is respectfully asserted that Applicant's claimed invention as a whole is nonobvious over Saito et al. and Summers. Neither Saito et al. nor Summers discloses an ongoing process tool such as that which is disclosed and claimed by Applicant. Applicant's claimed invention can be embodied, for instance, as an engineering and/or business process tool encompassing the entire life cycle of machinery systems. Applicant teaches an integrative, dynamic methodology that treats various phases of an ongoing process. Applicant's business plan can have many processes

PATENTS

beginning or occurring simultaneously at different parts of Applicant's plan. Saito et al. teach a single project (or single task) management methodology. Summers teaches a management training methodology. Applicant teaches a comprehensive business plan methodology which accounts for the potential execution of any of multiple tasks.

Basically speaking, Saito et al. and Summers each disclose a computational approach whereby data is input according to specified criteria, the data is processed (i.e., mathematical and/or logical operations are performed on data according to programmed instructions in order to obtain desired information), and the processed information is output. The output represents an answer or result such as in terms of a management strategy or management training scenario. In contradistinction to Saito et al. and Summers, Applicant's claimed invention involves processing insofar as a compilation or manual in a database is maintained accessibly and modifiably by client computers corresponding to individual organizational units. As distinguished from Saito et al. and Summers, Applicant discloses a dynamic, interactive, integrated process, both referential and revisable, that the personnel of the various organizational units follow and adjust on a continual basis in furtherance of accomplishing various tasks. Applicant's invention can be embodied, for instance, as a flexible engineering method and system for describing the life cycle of machinery. Applicant's methodology is more "human" in that it does not provide for the inputting, processing and outputting of fixed items in the senses disclosed by Saito et al. and Summers.

Typically, the present invention permits participants to avail themselves of and to guide themselves in accordance with integrated organizational process steps to accomplish an overall mission (e.g., life cycle management of machinery systems). The inventive method and system, generally as claimed, represent a computer-based execution tool that is continually referable and modifiable; it is practicable, for instance, for purposes of achieving specific tasks. Applicant's claimed invention does

PATENTS

not involve computer programming that involves processing in the manners disclosed by Saito et al. and Summers, e.g., in terms of the performance of mathematical/logical operations on a particular step to reach a succeeding step such as disclosed by Saito et al. Applicant's claimed invention is not hierarchal; in contrast, Saito et al.'s invention is hierarchal, i.e., a particular step must be performed before performing another particular step. Rather, Applicant discloses and claims a dynamic interactive process whereby a compilation/manual is contained in a server's database, and wherein the compilation/manual contained in the server's database can be accessed and changed at any time and at any location in the compilation/manual. According to Applicant's claimed invention, the individual workflow processes are fully integrated, particularly via the compilation/manual, in that all of the individual workflow processes are described, and in that each individual workflow process is workflow-linked with one or more other individual workflow processes.

Claim 1

Applicant's claim 1 recites the following: A method of organizing and effecting a dynamic workflow management system using a computer network that permits computer access to a server capable of containing a centralized database pertaining to said dynamic workflow management system, said method comprising: identifying core functions; producing information pertaining to said core functions, said information including plural individual workflow descriptions, each said individual workflow description describing a said core function and establishing at least one linkage of said individual workflow description with at least one other said individual workflow description; establishing core function units, said core function units at least substantially representing said core functions; uploading to said server for storage in said centralized database a coherent presentation essentially integrating said information pertaining to said core functions, said coherent presentation being computer-accessible by said core function units; and updating said coherent presentation at least once, each said

PATENTS

at least one nexus between said functional flow and the functional flow associated with at least one other said refined core function; storing said manual in said central computer for computer access by said organizational units, said manual being stored in a form electronically modifiable by each said organizational unit; and maintaining currency of said manual as stored in said central computer, said maintaining currency including electronically modifying of said manual, by at least one said organizational unit, with respect to at least one nexus between the respective functional flows associated with at least two said refined core functions.

Claim 29

Applicant's claim 29 recites the following: A computer-networked system for performing workflow management, said system comprising a plurality of clients and a server, said server being configured to maintain a centralized database relating to said workflow management that is computer-accessible by said clients, said server being further configured to receive, in said centralized database, information uploaded by any of said clients, wherein said uploaded information includes: identification of a plurality of core functions; a plurality of individual workflow descriptions each describing a said core function and establishing at least one linkage of said individual workflow description with at least one other said individual workflow description; a plurality of core functional units, said plurality of core function units at least substantially representing said plurality of core functions; a compilation of said plurality of individual workflow descriptions, said compilation being for utilization by said plurality of core functional units; and revisionary input, said revisionary input revising said compilation, each said revisionary input including at least a portion of a said individual workflow description so as to render at least one revision to the preceding said individual workflow description describing the same said core function, each said revisionary input revising said compendium with respect to said at least one linkage of a said individual workflow description with at least one other said individual workflow description.

PATENTS

The above limitations recited by Applicant in Applicant's independent claims 1, 19 and 29 are neither taught nor suggested by Saito et al. and Summers, regardless of whether these two references are considered together or separately.

Claims 2-9, 12-15, 21-23, 30-32

Given the nature of business terminology, it is possible that Summers somewhere discloses at least one of Applicant's core functions, or that they are divided into external core functions and internal core functions. The Office variously points to Summers at column 27, lines 7-67; column 17, lines 55-67 to column 18, line 67. Nevertheless, Applicant does not read Summers to disclose internal core functions and external core functions. Nor does Applicant read Summers to disclose external core functions including (or selected from the group consisting of) life cycle management, acquisition, research and development, test and evaluation, in-service engineering, integrated logistic support, program management and platform management. Nor does Applicant read Summers to disclose internal core functions including (or selected from the group consisting of) facilities, budget and contracts. Neither Saito et al. nor Summers teach or suggest internal and external core functions or core functional units, or any of the specific core functions or core functional units set forth in Applicant's dependent claims 2-9, 12-15, 21-23, 30-32. Even if, *arguendo*, either Saito et al. or Summers happened to disclose something that is equivalent to Applicant's internal-versus-external core function concept, or that is equivalent to any of Applicant's enumerated core functions or core functional units, this would still not gainsay the fact that Applicant's internal and external core functions or core functional units are dependently recited in the contexts of independent claims 1, 19 and 29, and that these additional limitations lend additional patentability to those claims when viewed in those contexts.

Claims 10 and 11

As recited in claims 10 and 11, each workflow characterization

PATENTS

includes a narrative description, a procedural description and a flow diagrammatic description. The Office addresses claims 10 and 11 on page 5 of the second Office action,, in subsections "(J)" and "(K)." It is seen that the Examiner repeats his habit of addressing "added features" only, similarly as he treats independent claims 1, 19 and 29. Accordingly, the second Office action neglects to even attempt to support the proposition that Applicant's workflow characterization that includes a narrative description, a procedural description and a flow diagrammatic description is disclosed by either Saito et al. or Summers. In other words, the Office is silent on these limitations.

Claims 16, 24 and 33

As recited in claims 16, 24 and 33, one or more types of communications among the organizational units is instituted, selected from the group consisting of telephone, telefax, paper correspondence and electronic mail. The Examiner repeats his habit of addressing "added features" only, similarly as he treats independent claims 1, 19 and 29 and some other dependent claims. Accordingly, the second Office action neglects to even attempt to support the proposition of one or more types of communications among the organizational units being instituted, selected from telephone, telefax, paper correspondence and electronic mail. In other words, the Office is silent on these limitations.

Claims 17 and 20

The Examiner repeats his habit of addressing "added features" only, therefore not addressing claims 17 and 20 in their entirety. Further, the Examiner purports to find "hard copies" at Saito et al., column 6, lines 31-48. Applicant respectfully queries: Where in this segment are the "hard copies" disclosed by Saito et al.?

Claim 18

The Examiner repeats his habit of addressing "added features" only,

PATENTS

therefore not addressing claim 18 in its entirety. Accordingly, the second Office action neglects to even attempt to find, in either Saito et al. or Summers, the establishment of organizational units including the establishment of a plurality of teams, each team having the responsibility of submitting a corresponding workflow characterization.

Claims 25 and 26

The Examiner repeats his habit of addressing "added features" only, therefore not addressing claim 18 in its entirety. Accordingly, the second Office action totally ignores the whole meaning of claims 25 and 26. The Office fails to consider that the compilation/manual is kept current, at least to some extent by maintaining a scheduling policy for continually improving the organizational workflow, according to which the periodic updating of the compilation/manual is prescribed. (Applicant's claims 25 and 26) The second Office action also fails to consider that the periodic updating of the compilation/manual includes electronic modification thereof. (Applicant's claim 26)

(ii) Motivation or Suggestion to Combine Saito et al. and Summers

It is well-settled that, in order to sustain a rejection under 35 U.S.C. 103(a) involving a combination of references, there must be motivation present within the references themselves to be combined in the manner proposed. See, e.g., *Ecologchem Inc. v. Southern California*, 56 USPQ2d 1065 (Fed. Cir. 2000), which is instructive at pages 1071-1076:

.... We "cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." [citation omitted]

Our case law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references. [citation omitted].... "Combining prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability." [citation

PATENTS

omitted]

"When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references." The same principle applies to invalidation. "Obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. [citation omitted]....

In this case, the district court used the '411 patent as a blueprint, with the Houghton process as the main structural diagram, and looked to other prior art for the elements present in the patent but missing from the Houghton process....

Because we do not discern any evidentiary basis for the finding by the district court that there was a suggestion, teaching, or motivation to combine the prior art references cited against the claimed invention, the district court's conclusion of obviousness cannot stand....

As previously noted herein, three times in the second Office action (i.e., separately with respect to claims 1, 19 and 29) the Office justifies its combination of Saito et al. with Summers by making the following assertion: "It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Summers within the system of Saito with the motivation of increasing communication by investigating discussion of strategy and operation and by illuminating business concerns (See Summers, Col. 2, lines 19-21)." Summers does indeed disclose at column 2, lines 1-21, "A manager will gain the following benefits by using MTSs to improve his management skill:... MTSs increase communication by instigating discussion of strategy and operations and by illuminating business concerns." It is unclear how this "benefit" (Summers, column 2, line 1) by Summers bears relation to Applicant's claimed change respecting a nexus/linkage between workflow descriptions of plural core functional units as set forth in a compilation such as a manual.

Summers discloses that an organization's use of his simulation invention will benefit the organization so as to "increase communication by instigating discussion of strategy and operations and by illuminating business concerns." That is, organizational people can use Summer's simulation tool, discuss alternative responses to various situations, etc.,

PATENTS

and this will benefit the company in terms of communication and other ways. As pointed out hereinabove, the type of "change" that Summers discloses is change in the training simulation to afford the management trainee an opportunity to be tested and instructed on various scenarios that he/she may face in the real world. This is totally different from the type of "change" disclosed and claimed by Applicant, which is in terms of nexuses/linkages between workflow descriptions pertaining to different core functional units.

In any event, there is no motivation or suggestion in Saito et al. to change anything. Saito et al. are concerned with management of an individual task or project. Summers is concerned with management simulation for the purpose of training people having managerial positions. Saito et al. input information and information is output. This is done according to an unchangeable step-by-step process wherein the answer obtained is the answer obtained, so to speak. Certainly a practitioner of Saito et al. would have the option of not heeding Saito et al.'s predictions, but any change of this kind would not in any way be disclosed or suggested by Saito. Such change would amount to the practitioner's prerogative to step outside the bounds of Saito's teachings. Saito et al. are not motivated to incorporate change in their invention. To argue that Saito et al. are motivated to incorporate change in their invention is akin to arguing that a calculator has associated therewith a motivation to change its algorithm for performing a mathematical operation, e.g., computing the square root of a number.

In a larger sense, the fact that the Office is combining two references that are directed to entirely different endeavors, albeit both ostensibly residing in the business realm, itself raises questions.

Since the 35 U.S.C. 103 rejection involves an improper combination of references, this rejection cannot stand. On this basis alone, the Examiner has failed to make out a *prima facie* case of obviousness.

PATENTS

(8) CLAIMS APPENDIX

Hereinbelow please find claims 1-33, which are the claims presently in the application and involved in the instant appeal.

Claim 1: A method of organizing and effecting a dynamic workflow management system using a computer network that permits computer access to a server capable of containing a centralized database pertaining to said dynamic workflow management system, said method comprising:

identifying core functions;

producing information pertaining to said core functions, said information including plural individual workflow descriptions, each said individual workflow description describing a said core function and establishing at least one linkage of said individual workflow description with at least one other said individual workflow description;

establishing core function units, said core function units at least substantially representing said core functions;

uploading to said server for storage in said centralized database a coherent presentation essentially integrating said information pertaining to said core functions, said coherent presentation being computer-accessible by said core function units; and

updating said coherent presentation at least once, each said updated coherent presentation being computer-accessible by said core function units, each said updating including uploading at least a portion of a said individual workflow description describing a said core

PATENTS

function so as to render at least one change to the preceding said individual workflow description describing the same said core function, said at least one change including modification with respect to said at least one linkage of said individual workflow description with at least one other said individual workflow description.

Claim 2: A method according to claim 1, wherein said identifying core functions includes identifying external core functions selected from the group consisting of life cycle management, acquisition, research and development, test and evaluation, in-service engineering, integrated logistic support, program management and platform management.

Claim 3: A method according to claim 1, wherein said identified core functions are external core functions including life cycle management, acquisition, research and development, test and evaluation, in-service engineering, integrated logistic support, program management and platform management.

Claim 4: A method according to claim 1, wherein said identifying core functions includes identifying internal core functions selected from the group consisting of facility planning, budget strategy and contracting requirements.

Claim 5: A method according to claim 1, wherein said identifying core functions includes

PATENTS

identifying internal core functions selected from the group consisting of facilities, budget and contracts.

Claim 6: A method according to claim 1, wherein said identified core functions are external core functions including facilities, budget and contracts.

Claim 7: A method according to claim 1, wherein said identifying core functions includes dividing said core functions into external core functions and internal core functions.

Claim 8: A method according to claim 7, wherein said identified external core functions are selected from the group consisting of life cycle management, acquisition, research and development, test and evaluation, in-service engineering, integrated logistic support, program management and platform management.

Claim 9: A method according to claim 7, wherein said identified internal core functions are selected from the group consisting of facilities, budget and contracts.

Claim 10: A method according to claim 1, wherein each said individual workflow description includes narrative description, procedural description and flow diagrammatic description.

PATENTS

Claim 11: A method according to claim 1, wherein said coherent presentation includes a manual, wherein said manual includes narrative description, procedural description and flow diagrammatic description for each core function.

Claim 12: A method according to claim 1, wherein said establishing core function units includes establishing external core function units selected from the group consisting of life cycle management, acquisition, research and development, test and evaluation, in-service engineering, integrated logistic support, program management and platform management.

Claim 13: A method according to claim 1, wherein said establishing core function units includes establishing internal core functions selected from the group consisting of facilities, budget and contracts.

Claim 14: A method according to claim 1, wherein said establishing core function units includes:

establishing external core function units selected from the group consisting of life cycle management, acquisition, research and development, test and evaluation, in-service engineering, integrated logistic support, program management and platform management; and

establishing internal core functions selected from the group consisting of facilities,

PATENTS

budget and contracts.

Claim 15: A method according to claim 1, wherein said establishing core function units includes:

establishing external core function units including life cycle management, acquisition, research and development, test and evaluation, in-service engineering, integrated logistic support, program management and platform management; and

establishing internal core functions including facilities, budget and contracts.

Claim 16: A method according to claim 1, said method further comprising instituting communications among said core function units, said instituting communications including instituting at least one type of communications selected from the group consisting of telephone, telefax, paper correspondence and electronic mail.

Claim 17: A method according to claim 1, said method further comprising distributing hard copies of said coherent presentation among said core function units.

Claim 18: A method according to claim 1, wherein said producing information pertaining to said core functions includes establishing plural teams, each said team being charged with

PATENTS

submitting a section of said information that characterizes a different said core function.

Claim 19: A method for defining and executing the flow of management operations, said method making use of a central computer and plural workstation computers connected to said central computer, said method comprising:

establishing plural organizational units, each said organizational unit availing itself of at least one said workstation computer, said establishing including proposing initial core functions and assembling informational segments, each said informational segment describing the functional flow associated with a said initial core function, the functional flow associated with each said initial core function being characterized by at least one nexus between said functional flow and the functional flow associated with at least one other said initial core function, said establishing plural organizational units further including designating refined core functions, said refined core functions at least substantially corresponding to said initial core functions, each said organizational unit performing a said refined core function;

formulating a manual that is at least substantially arranged in accordance with said organizational units and said refined core functions respectively performed by said organizational units, said manual at least substantially incorporating said informational segments so as to prescribe said flow of management operations both intrarelationally within each said organizational unit and interrelationally between said organizational units, the functional flow associated with each said refined core function being characterized by at least one nexus between said functional flow and the functional flow associated with at least one other said

PATENTS

refined core function,;

storing said manual in said central computer for computer access by said organizational units, said manual being stored in a form electronically modifiable by each said organizational unit; and

maintaining currency of said manual as stored in said central computer, said maintaining currency including electronically modifying of said manual, by at least one said organizational unit, with respect to at least one nexus between the respective functional flows associated with at least two said refined core functions.

Claim 20: A method for defining and executing the flow as recited in claim 19, said method further comprising disseminating hard copies of said manual to said organizational units.

Claim 21: A method for defining and executing the flow as recited in claim 19, wherein said establishing plural organizational units includes establishing external core function units, said external core function units performing respective external core functions, said external core function units including life cycle management unit, acquisition unit, research and development unit, test and evaluation unit, in-service engineering unit, integrated logistic support unit, program management unit and platform management unit.

Claim 22: A method for defining and executing the flow as recited in claim 19, wherein said

PATENTS

establishing plural organizational units includes establishing internal core function units, said internal core function units performing respective internal core functions, said internal core function units including facilities unit, budget unit and contracts unit.

Claim 23: A method for defining and executing the flow as recited in claim 19, wherein said establishing plural organizational units includes:

establishing external core function units, said external core function units performing respective external core functions, said external core function units including life cycle management unit, acquisition unit, research and development unit, test and evaluation unit, in-service engineering unit, integrated logistic support unit, program management unit and platform management unit; and

establishing internal core function units, said internal core function units performing respective internal core functions, said internal core function units including facilities unit, budget unit and contracts unit.

Claim 24: A method for defining and executing the flow as recited in claim 19, said method further comprising enabling communication among said organizational units in furtherance of said flow of management operations, wherein said enabling communication includes instituting at least two communication means selected from the group consisting of telephone, telefax, correspondence and e-mail.

PATENTS

Claim 25: A method for defining and executing the flow as recited in claim 19, said maintaining currency including formulating a scheduling policy for continually improving said flow of management operations, said formulating a scheduling policy including prescribing the periodic updating of said manual.

Claim 26: A method for defining and executing the flow as recited in claim 25, wherein said periodic updating of said manual includes said electronically modifying of said manual.

Claim 27: A method for defining and executing the flow as recited in claim 19, wherein said electronically modifying of said manual includes adding at least one nexus between the respective functional flows associated with at least two said refined core functions.

Claim 28: A method for defining and executing the flow as recited in claim 19, wherein said electronically modifying of said manual includes removing at least one nexus between the respective functional flows associated with at least two said refined core functions.

Claim 29: A computer-networked system for performing workflow management, said system comprising a plurality of clients and a server, said server being configured to maintain a centralized database relating to said workflow management that is computer-accessible by said

PATENTS

clients, said server being further configured to receive, in said centralized database, information uploaded by any of said clients, wherein said uploaded information includes:

identification of a plurality of core functions;

a plurality of individual workflow descriptions each describing a said core function and establishing at least one linkage of said individual workflow description with at least one other said individual workflow description;

a plurality of core functional units, said plurality of core function units at least substantially representing said plurality of core functions;

a compilation of said plurality of individual workflow descriptions, said compilation being for utilization by said plurality of core functional units; and

revisionary input, said revisionary input revising said compilation, each said revisionary input including at least a portion of a said individual workflow description so as to render at least one revision to the preceding said individual workflow description describing the same said core function, each said revisionary input revising said compendium with respect to said at least one linkage of a said individual workflow description with at least one other said individual workflow description.

Claim 30: A system for performing workflow management as recited in claim 29, wherein said core functional units comprise external core functional units including a life cycle management unit, an acquisition unit, a research and development unit, a test and evaluation unit, an in-

PATENTS

service engineering unit, an integrated logistic support unit, a program management unit and a platform management unit.

Claim 31: A system for performing workflow management as recited in claim 29, wherein said core functional units comprise internal core functional units including a facilities unit, a budget unit and a contracts unit.

Claim 32: A system for performing workflow management as recited in claim 29, wherein said core functional units comprise:

external core functional units including a life cycle management unit, an acquisition unit, a research and development unit, a test and evaluation unit, an in-service engineering unit, an integrated logistic support unit, a program management unit and a platform management unit; and

internal core functional units including a facilities unit, a budget unit and a contracts unit.

Claim 33: A system for performing workflow management as recited in claim 29, said system further comprising computer-based communication means and non-computer-based communication means, wherein said computer-based communication means includes electronic mail, and wherein said non-computer-based communication means includes telephone, facsimile transmission and written correspondence.

PATENTS

(9) EVIDENCE APPENDIX

NONE/NOT APPLICABLE

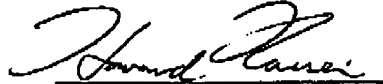
(10) RELATED PROCEEDINGS APPENDIX

NONE/NOT APPLICABLE

CONCLUSION

WHEREFORE, in view of the foregoing, Applicant-Appellant respectfully requests allowance of claims 1-33.

Respectfully submitted,



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MAR 21 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: : Confirm. No.: 8767
GLEN G. WARD, DONALD J. COLLINS and :
RICHARD A. STUTCHFIELD :
Serial No.: 09/671,871 : Art Unit: 3626
Filing Date: 09/28/00 :
Attorney Docket No.: 82,144 :
Title: OPERATING PLAN FOR MACHINERY : Examiner: Vanel Frenel

FFF AUTHORIZATION

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231


Sir:

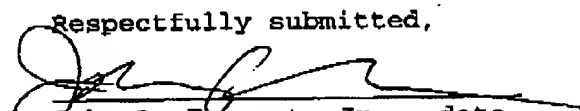
Applicant-Appellant hereby respectfully files this "Fee Authorization" together with an "Appeal Brief." A "Notice of Appeal" was filed on December 21, 2004.

Please charge to **Deposit Account 50-0958** the fee of \$500 for filing an appeal brief under 37 CFR 41.37.

If the Office has not already done so, please also charge to **Deposit Account 50-0958** the fee of \$120 for a request for a one-month extension of time under 37 CFR 1.136(a). Please note that Applicant filed a "Petition for Extension of Time under 37 CFR 1.136(a)" on 20 March 2005.

Please charge any additional charges to **Deposit Account 50-0958**. Please credit any overpayment to **Deposit Account 50-0958**.


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Respectfully submitted,

John L. Forrest, Jr. date
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Certificate of Facsimile Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office (Fax No. 703-872-9306) on Monday, 21 March 2005.

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21 March 2005

Serial No. 09/671,871 Fee Authorization Page 1 of 1